

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BOBBY BANKS, TIMOTHY DOGAN,
ZANGERIO DOGAN, WILLIAM FRAZIER,
ERIC GOMEZ, RICHARD PHILLIPS, ARIC
RILEY, CHRISTOPHER ROBERTS, VAN
RODEN, RICKY ROMINES, LARRY
SANDERS, EMMANUEL STALLWORTH,
SHUN THOMAS, ARTHUR VARDAMAN,
SHELDON WATTS, and MARCUS
SIMPSON,

Plaintiffs,

v.

DIRECTV, LLC and MULTIBAND CORP.,

Defendants.

Case No. 1:14-cv-00398-LG-RHW

MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Plaintiffs move for leave to file a Second Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. A copy of the proposed amended complaint is attached as Exhibit 1. A copy of the proposed amended complaint in redline format to show the changes between the First Amended Complaint and the Second is attached as Exhibit 2.

ARGUMENT

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). This language establishes a "presumption in favor of granting parties leave to amend," which serves the aim of

“promoting litigation on the merits rather than on procedural technicalities.” *Mayeaux v. La. Health Serv. And Indem. Co.*, 376 F.3d 420, 425, 427 (5th Cir. 2004). Though the decision whether to grant leave to amend is committed to a district judge’s discretion, “the term ‘discretion’ in this context may be misleading, because Fed. R. Civ. P. 15(a) evinces a bias in favor of granting leave to amend.” *Id.* (internal quotation marks omitted). Thus, a district court abuses its discretion if it denies leave to amend without a “substantial reason,” such as undue delay, bad faith, dilatory motive, repeated failures to cure deficiencies, undue prejudice, or futility of amendment. *Id.* at 425 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Per the Court’s text-only order of September 1, 2015, Plaintiffs file this motion for leave to file a Second Amended Complaint. The proposed complaint clarifies and amplifies the deficiency described in the Court’s order granting in part and denying in part the defendants’ motions to dismiss as they relate to the allegations of a willful violation of the Fair Labor Standards Act by Defendant Multiband Corporation.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs’ Motion for Leave to File a First Amended Complaint, and such other and further relief as the Court deems just in the premises.

Dated: September 15, 2015

Respectfully submitted,

/s/ Cynthia D. Burney

By: _____

Cynthia D. Burney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all attorneys of record via the Court's electronic case filing system on September 15, 2015.

By /s/ Cynthia D. Burney
Attorney for Plaintiff